

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1, 5-29, 31-33, and 35-39 are pending in this application. Claims 1, 5, 29, 31, and 33 are amended and Claims 3, 4, and 30 are canceled without prejudice or disclaimer by the present amendment. As amended Claims 1, 5, 29, 31, and 33 are supported by the original claims, no new matter is added.

Applicants gratefully acknowledge the allowance of Claims 36-39 and the indication that Claims 6-14, 17-20, 25, 27, and 28 contain patentable subject matter.

In the outstanding Official Action, Claims 1, 3-20, 29-33, and 34 were rejected under 35 U.S.C. §112, second paragraph, Claim 1 was rejected under 35 U.S.C. §102(b) as anticipated by Allen (U.S. Patent No. 5,203,095); Claims 3-5, 21, 22, and 26 were rejected under 35 U.S.C. §103(a) as unpatentable over Allen in view of Lombardino (U.S. Patent No. 6,751,891); and Claims 15, 16, 23, 24, 29-33, and 35 were rejected under 35 U.S.C. §103(a) as unpatentable over Allen in view of Lombardino and further in view of Preman et al. (U.S. Patent No. 5,224,280, hereinafter "Preman").

With regard to the rejection of Claims 1, 3-20, 29-33, and 34 under 35 U.S.C. §112, second paragraph, Claim 1 is amended to recite "a portion of said at least one cushioning element is disposed adjacent to a periphery of said shoe" and Claim 29 is amended to recite "said stiffening spring has a curved top disposed above said at least one cushioning element and a substantially flat bottom disposed below said at least one cushioning element." Accordingly, Claims 1, 5-20, 29, 31-33, and 34 are believed to be in compliance with all requirements under 35 U.S.C. §112, second paragraph.

As the subject matter of Claims 3 and 4 have been added to Claim 1, the rejection of Claim 1 as anticipated by Allen is believed to be overcome. With regard to the rejection of

Claim 4 as unpatentable over Allen in view of Lombardino, that rejection is respectfully traversed.

Amended Claim 1 recites in part, “a space is provided between adjacent ones of said first plurality of cushioning elements.”

The outstanding Office Action cited extrusions 24 and 28 of Lombardino as “a first plurality of cushioning elements.”¹ However, Lombardino does not teach or suggest that there is any space between extrusions 24 and 28. In fact, Figures 2 and 4 of Lombardino show that extrusions 24 and 28 are in *contact*. Thus, it is respectfully submitted that Lombardino does not teach or suggest “a space is provided between adjacent ones of said first plurality of cushioning elements” as recited in amended Claim 1. Consequently, Claim 1 (and Claims 5-20 dependent therefrom) is patentable over Allen in view of Lombardino.

As amended Claim 29 recites “a space is provided between adjacent ones of said plurality of cushioning elements,” Claim 29 (and Claims 31-33 and 35 dependent therefrom) is believed to be patentable over Allen and Lombardino for at least the reasons described above with respect to Claim 1. As Preman also does not teach or suggest “a space is provided between adjacent ones of said plurality of cushioning elements” as recited in Claim 29, Claim 29 is believed to be patentable over any combination of Allen, Lombardino, and Preman.

With regard to the rejection of Claim 5 as unpatentable over Allen in view of Lombardino, it is noted that Claim 5 is dependent from Claim 1, and thus is believed to be patentable for at least the reasons discussed above. Further, it is respectfully submitted that Lombardino does not cure any of the above-noted deficiencies of Allen. Accordingly, it is respectfully submitted that Claim 5 is patentable over Allen in view of Lombardino.

¹See outstanding Office Action, page 3, lines 17-20.

With regard to the rejection of Claims 15, 16, 31-33, and 35 as unpatentable over Allen in view of in view of Lombardino and further in view of Preman, it is noted that Claims 15, 16, 31-33, and 35 are dependent from Claims 1 and 29, and thus are believed to be patentable for at least the reasons discussed above with respect to Claim 1. Further, it is respectfully submitted that Lombardino and Preman do not cure any of the above-noted deficiencies of Allen. Accordingly, it is respectfully submitted that Claims 15, 16, 31-33, and 35 are patentable over Allen in view of Lombardino and further in view of Preman.

With respect to the rejection of Claim 21 as unpatentable over Allen in view of in view of Lombardino, that rejection is also respectfully traversed.

Amended Claim 21 recites in part, “a second cushioning assembly disposed adjacent to said first cushioning assembly on a lateral side of said first cushioning assembly.”

In contrast, Figure 6 of Lombardino, cited in the outstanding Office Action as describing first through fifth cushioning assemblies,² illustrates a shoe with springs 50 *offset* from each other, rather than adjacent on a lateral side of each other. In fact, the outstanding Office Action concedes that the springs 50 are “staggered” from each other. Thus, as Lombardino does not describe any springs that are adjacent on a lateral side of any other spring, Lombardino does not teach or suggest “a second cushioning assembly” as recited in Claim 21. Accordingly, Claim 21 (and Claims 22-28 dependent therefrom) are believed to be patentable over Allen in view of in view of Lombardino.

With regard to the rejection of Claims 23 and 24 as unpatentable over Allen in view of in view of Lombardino and further in view of Preman, it is noted that Claims 23 and 24 are dependent from Claim 21, and thus are believed to be patentable for at least the reasons discussed above with respect to Claim 21. Further, it is respectfully submitted that Preman does not cure any of the above-noted deficiencies of Lombardino and Allen. Accordingly, it

²See outstanding Office Action at page 3, lines 21-23.

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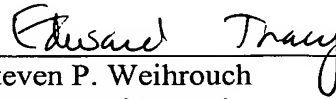
is respectfully submitted that Claims 23 and 24 are patentable over Allen in view of Lombardino and further in view of Preman.

Accordingly, in view of the present amendment, no further issues are believed to be outstanding and the present application is believed to be in condition for formal allowance.

An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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